

**DECISION**



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**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-200702

DATE: April 10, 1981

MATTER OF: Tri-Wall Containers

*[Protest Alleging Solicitation Was Unduly Restrictive  
of Competition]*

DIGEST:

Use of economic price adjustment clause in solicitation is appropriate where serious doubt exists as to stability of market conditions. Fact that agency solicits comments from industry concerning incorporation of economic price escalation clause in future IFB's does not commit agency to use escalation clause, where fiberboard market experienced five price increases in 1 year, but later evidences no fluctuation for over 8 months.

Tri-Wall Containers (Tri-Wall) protests solicitation No. SFCB-08-80-081 issued by the General Services Administration (GSA) as unduly restrictive of competition because it did not include a price escalation clause.

GSA's invitation for bids (IFB) was issued on September 19, 1980, and solicited firm fixed-price bids for a requirements contract covering triple-wall fiberboard shipping boxes for a period from the date of award through August 31, 1981.

GSA has made award notwithstanding the pendency of the protest pursuant to Federal Procurement Regulation (FPR) § 1-2.407-8(b)(4) (1964 ed. amend. 68) because of urgency in maintaining an adequate stock position.

Tri-Wall argues that the volatility in the market for linerboard, a material component of fiberboard boxes, makes impossible fair and reasonable competition for contracting on a firm fixed-price basis for a requirements contract, thus necessitating the

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inclusion of a price escalation clause. It further argues that GSA had adequate information to warrant the incorporation of a price escalation clause and, by failing to do so, designed a solicitation that would result in a similar pattern of bids obtained in the previous year's requirements contract. In support of its position, Tri-Wall cites a letter of January 31, 1980, from GSA to suppliers of fiberboard boxes. The letter, in pertinent part, states:

"\* \* \* the present uncertainty in this market precludes adequate competition for contracting on a firm fixed price basis for long term requirement type contracts.

"We believe that utilization of an economic price adjustment clause may be beneficial to all concerned, and will offer protection against uncontrollable fluctuation in the price of raw material."

The letter also solicited comments from manufacturers about three indexes for possible use as material escalators. According to the record, comments were solicited from 62 suppliers because the triple-wall fiberboard boxes and sheets industry had experienced five price increases in linerboard between January 1979 and December 1979. The letter evidences no commitment to utilize an economic price adjustment clause and was in response to prevailing market conditions. Indeed, the letter suggests that utilization of an economic price adjustment clause may be beneficial "to all concerned," but also states that it would offer protection "against uncontrollable fluctuations." FPR § 1-3.404-3(b) (1964 ed.) states:

"Use of this type of contract is appropriate where serious doubt exists as to the stability of market \* \* \* conditions which will exist during an extended period of production \* \* \* Escalation should be restricted \* \* \* to industry-wide contingencies \* \* \*."

The record indicates that prior to issuing the present solicitation, the contracting officer utilized Official Board Markets--Yellow Sheets and Producer Prices and Price Indexes Data, industry and Government publications, as well as agency transactions with the fiberboard industry, to evaluate the market conditions affecting linerboard to determine whether to utilize fixed prices or a price adjustment clause in the solicitation.

While the January 31, 1980, letter reflected GSA's concern at the fluctuating fiberboard market of the prior year, the price of fiberboard remained stable from January to September 1980, the date of the solicitation, according to the trade publications. Moreover, the Official Board Markets publication reported a decline in demand for fiberboard in April 1980. Considering that the market evidenced no upward fluctuations for over 8 months after witnessing five price increases in 1979, GSA determined to invite bids on a firm fixed-price basis.

Since no "serious doubt" existed "as to the stability of market \* \* \* conditions," GSA properly exercised its discretion in issuing the solicitation without a price escalation clause. Although the market for linerboard has seen price increases since September 1980, this does not affect the validity of that determination since, according to trade and Government publications, market conditions appeared stable at the time of the issuance of the IFB. See also, Translation Consultants, Ltd., B-188994, September 14, 1977, 77-2 CPD 189.

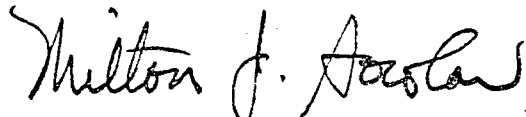
Tri-Wall alleges that the failure to incorporate the price escalation provisions unduly restricted competition. The protester argues that the prior year's solicitation did not include an escalation clause and thereby resulted in only one bid. It further argues that the failure to receive more than one bid was due to price increases in raw materials and that GSA's failure to incorporate the price escalation clause in the present solicitation was arbitrary, given this information.

The record indicates that for the prior solicitation three companies submitted bids. GSA informs us that Tri-Wall's bid was rejected as nonresponsive to the terms of the solicitation; another bidder bid on four of the 13 groups; and the award was made to Connelly Containers, Inc., as the lowest responsive bidder for each of the 13 groups. Consistent with the results of the 1979 solicitation, GSA expected three to four responses to the 1980 IFB. As of the bid opening date, four bids had been received, and at least two of the bids are responsive. FPR § 1-2.104-3 (1964 ed. amend 139) states:

"Escalation clauses are not normally desirable \* \* \* [W]here the contracting officer, on the basis of his knowledge of the market or previous advertisements for like items, expects that a requirement for firm fixed-price bids will unnecessarily restrict competition or unreasonably increase price bids, invitation for bids may include an escalation clause \* \* \*."

Based on the 1979 solicitation bid responses and in view of the prevailing market conditions in September 1980, the contracting officer did not act arbitrarily in expecting a competitive and reasonable response to the IFB and, therefore, acted properly in excluding an economic price escalation clause from the September 1980 solicitation.

Accordingly, Tri-Wall's protest is denied.



Acting Comptroller General  
of the United States